

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3
4 MARC SPITZER, Chairman
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 In the matter of)	DOCKET NO. S-03482A-03-0000
)	
10 INTERSECURITIES, INC.)	DECISION NO. <u>67087</u>
11 570 Carillon Parkway)	
12 St. Petersburg, FL 33716-1202)	ORDER TO CEASE AND DESIST,
13 CRD# 16164)	ORDER OF RESTITUTION, ORDER
)	FOR ADMINISTRATIVE PENALTIES,
14 GREGORY RUSSELL BROWN and KAREN)	ORDER OF REVOCATION AND
15 BROWN, husband and wife)	CONSENT TO SAME BY:
16 16417 South 15 th Drive)	RESPONDENTS GREGORY RUSSELL
17 Phoenix, Arizona 85045)	BROWN and KAREN BROWN
18 CRD# 2233684)	
)	
19 Respondents.)	

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RESPONDENT GREGORY RUSSELL BROWN (“BROWN”) and RESPONDENT KAREN BROWN (collectively “RESPONDENTS”) elect to permanently waive their right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* (“Securities Act”) with respect to this Order To Cease And Desist, Order of Restitution, Order for Administrative Penalties, Order of Revocation and Consent to Same by: Respondents GREGORY RUSSELL BROWN and KAREN BROWN (“Order”). RESPONDENTS admit the jurisdiction of the Arizona Corporation Commission (“Commission”), including the Commission’s jurisdiction over the marital community of BROWN and KAREN BROWN; neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I

FINDINGS OF FACT

1. At all times material hereto, BROWN was a resident of Arizona. BROWN was

1 registered as a securities salesperson with INTERSECURITIES, INC., and was licensed in Arizona
2 as an insurance salesperson.

3 2. At all times material hereto, BROWN and KAREN BROWN were husband and
4 wife. BROWN's actions were in furtherance of and for the benefit of the marital community of
5 BROWN and KAREN BROWN. KAREN BROWN was joined in this action pursuant to A.R.S.
6 44-2031(C), solely to determine the liability of the marital community for BROWN's actions.

7 3. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon
8 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

9 4. At all times material hereto, American Telecommunications Company, Inc.
10 ("ATC") was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
11 September 17, 1998. Originally named ATC, Inc., the name was changed to American
12 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
13 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
14 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
15 Pass, Oregon 97526.

16 5. At all times material hereto, Paul S. Rubera ("Rubera") was the president and
17 control person of Alpha, and the control person of ATC.

18 6. ATC was organized by Rubera and operated in conjunction with and as an alter ego
19 of Alpha. The two companies were controlled by Rubera and his associates.

20 7. At all times material hereto, Alpha and ATC and their affiliates, sold pay telephones
21 with telephone service agreements pursuant to which the investor would share in the profits of the
22 pay telephone. Investors would enter into two agreements, a purchase agreement, and a service
23 agreement with Alpha to manage the phone. The two agreements were presented and promoted
24 simultaneously. The telephones were presented to potential investors with four options in the way
25 of service contracts, each varying in the amount of service provided. The four options varied from
26 Level 1, which included a minimum of service, to Level 4, which provided full service to the

1 purchaser, including choosing a site and installing the telephone, collecting all revenue from the
2 telephone's operation, repairing the telephone when necessary, and even repurchasing or buying
3 back the telephone at the investor's option. Under Level 4, Alpha would split the net proceeds
4 with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving 30%. The
5 price of the pay telephones was the same regardless of the service option chosen, \$5,000.00 per
6 telephone. Although investors were given a choice of using a company other than Alpha to
7 manage the phone, no Arizona investor to whom BROWN sold the investment picked a company
8 other than Alpha to manage their phones. A "typical return" on each pay telephone was touted as
9 14% per year. In practice, all purchasers received \$58.34 per month per pay telephone purchased,
10 which amounted to exactly 14% per annum.

11 8. ATC's primary role was marketing the contracts. Alpha's main focus was on
12 obtaining phone sites and installing, servicing, and managing the phones.

13 9. ATC was presented to the public as the sales organization for Alpha. In early 1999,
14 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
15 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
16 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
17 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
18 remained as the processing center for the contracts, while Alpha continued to perform the service
19 and maintenance of the phones.

20 10. At all times material hereto, Phoenix Telecom, LLC ("Phoenix") was located in
21 Georgia. Phoenix managed payphones sold to investors by TSI Group, Inc ("TSI") and Tri-Financial
22 Group, Inc. ("Tri-Financial"), located in Michigan, pursuant to sales and lease-back agreements.

23 11. At all times material hereto, ETS Payphones, Inc. was a Georgia company. In or
24 around late 1999 or early 2000, Phoenix transferred all of its lease agreements with investors to
25 ETS. On September 11, 2000, ETS filed for bankruptcy protection under chapter 11 of the
26 Bankruptcy Code, and investors stopped receiving their monthly payments.

1 12. ETS managed payphones sold to investors by BEE Communications, Inc. ("BEE"),
2 National Communications Marketing, Inc. ("NMCI"), and Communications Marketing, Associates
3 ("CMA"), located in Georgia and Florida, pursuant to lease-back agreements.

4 13. Under Phoenix and ETS lease-back agreements, investors would share in the profits
5 generated by operation of their pay telephones. Investors would enter into two agreements, a
6 purchase agreement, and a lease-back agreement with Phoenix or ETS to manage the phone. The
7 two agreements were presented and promoted simultaneously. The telephones were presented to
8 potential investors with three options in the way of service contracts, each varying in the amount of
9 service provided. The three options varied from Option 1, which included a minimum of service,
10 to Option 3, which provided full service to the purchaser, including choosing a site and installing
11 the telephone, collecting all revenue from the telephone's operation, repairing the telephone when
12 necessary, and even repurchasing or buying back the telephone at the investor's option. In the
13 Phoenix and ETS investments, the price of each phone was \$7,000 under the full-service option;
14 the distribution was \$82.25 per month for each phone. Although investors were given a choice of
15 using a company other than ETS to manage the phone, no Arizona investor to whom BROWN sold
16 the investment picked a company other than ETS to manage their phones. A "typical return" on
17 each pay telephone was touted as 14% per year.

18 14. BROWN, directly or indirectly, entered into agreements with Alpha, ATC, SPA,
19 BEE, NMCI, CMA, Phoenix, and/or ETS, pursuant to which BROWN sold investment contracts
20 involving Alpha pay telephones (the "Alpha investment contracts") and ETS pay telephones (the
21 "ETS investment contracts") within or from the state of Arizona. All Alpha and ETS investment
22 contracts BROWN sold were full service contracts.

23 15. BROWN was paid commissions on each telephone sold.

24 16. BROWN sold Alpha and ETS investment contracts involving at least 49 individuals or
25 entities within or from the state of Arizona from May 2000 through April 2001, for a total sales
26 amount of approximately \$2,752,850. However, those figures include more than \$400,000 paid by

1 BROWN and two other members of his family.

2 17. BROWN received commissions from the sale of Alpha and ETS investment contracts
3 in the total amount of \$230,000.00.

4 18. Alpha and ETS have long regulatory histories in which state securities regulators have
5 found that these purchases of pay telephones and accompanying service contracts were unregistered
6 securities in the form of investment contracts that were sold by unregistered persons and/or entities,
7 and ordered Alpha, ETS and those working with them to cease and desist. The orders entered during
8 the period when BROWN was selling the Alpha and ETS investment contracts include:

- 9 a. September 25, 1998, Emergency Cease and Desist Order issued by Kansas
10 Securities Commission against ETS, NCMI and others, for the sale of
11 unregistered securities in Kansas. On September 21, 1999, the Kansas
12 Securities Commission executed a Memorandum of Understanding, in which
13 the Commission alleged, *inter alia*, that the sale of the phones and leases
14 were securities in violation of the Kansas securities laws. NCMI agreed to
discontinue the previous arrangements, and ETS agreed to refund the
purchase price of the telephones to all Kansas customers. On February 8,
2000, the Kansas Securities Commission dismissed the prior Emergency
Cease and Desist Order.
- 15 b. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities
16 Commission, *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 17 c. November 17, 1999, Cease and Desist Order issued by North Carolina
18 Secretary of State, *In the Matter of the North Carolina Securities Division v.*
19 *ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 20 d. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary
21 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 22 e. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary
23 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201, in which Alpha
agreed to offer rescission to all Illinois purchasers.
- 24 f. November 24, 1999, Cease and Desist Order issued by Wisconsin
25 Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc.*
26 *and Paul S. Rubera, et al.*, No. S-99225(EX).
- g. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode
Island Department of Business Regulation, *In the Matter of Alpha Telcom,*
Inc. and ATC, Inc.

1 h. July 18, 2000, Florida Department of Banking and Finance filed
2 administrative action against Alpha and others, seeking a Cease and Desist
Order.

3 19. On or about April 19, 1999, BROWN requested ISI to approve as “outside business
4 activity” his sale of payphone “business opportunities.” BROWN sent ISI a package of materials to
5 review relating to payphone investments. Those materials included marketing and offering
6 documents relating to the ETS and Phoenix investment contracts.

7 20. According to BROWN, on or about April 26, 1999, ISI informed BROWN that
8 Arizona was one of the states that uncovered fraudulent payphone operations and to check with the
9 “Commissioner of Securities” to see if BCI/ETS Payphones had a clean record in Arizona.

10 21. According to BROWN, on or about April 27, 1999, BROWN contacted the Arizona
11 Securities Division (the “Division”) and inquired about ETS, BCI Financial, Phoenix, and Tri-
12 Financial and was informed that the Division had no record of any regulatory enforcement actions
13 taken against these companies in Arizona.

14 22. On or about April 29, 1999, ISI approved BROWN’S sale of “ETS Payphones/BEE
15 Communications” as outside business activity.

16 23. On or about November 25, 1999, ISI approved BROWN’S outside business activity
17 request to sell payphones sponsored by Phoenix.

18 24. In or around April 2000, BROWN reported his activity involving the sale of Alpha
19 payphones to ISI in his Annual Compliance Review Questionnaire for Calendar Year 1999.

20 25. On or about July 14, 2000, BROWN reported to ISI that the “phone deals”
21 comprised approximately 50% of his business, with year-to-date sales of \$200,000.

22 26. On or about August 18, 2000, ISI instructed BROWN to stop selling any telephone
23 leasing or pay telephone “arrangements” for any company.

24 27. Actions against Alpha and ETS after BROWN ceased his sales of the payphone
25 investment contracts include:
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- a. On October 23, 2000, the California Department of Corporations issued Orders to Desist and Refrain from the sale of unregistered securities and securities fraud in California, against ETS, NCMI and others.
- b. October 24, 2000, Desist and Refrain Order issued by California Department of Corporations.
- c. On February 6, 2001, the Alabama Securities Division issued an Order to Cease and Desist from the sale of unregistered securities in Alabama, against ETS and others.
- d. On February 26, 2001, the Washington Securities Division issued a Summary Order to Cease and Desist from the sale of unregistered securities and securities fraud in Washington, against ETS, NMCI.
- e. On February 28, 2001, the Indiana Securities Division Office of the Secretary of State issued an Order to Cease and Desist from the sale of unregistered securities and securities fraud in Indiana, against ETS, NCMI.
- f. On March 5, 2001, the Indiana Securities Division Office of the Secretary of State issued an Order to Cease and Desist from the sale of unregistered securities and securities fraud in Indiana, against Phoenix, Tri-Financial and others.
- g. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of Securities;
- h. August 27, 2001, Temporary Restraining Order issued by United States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283 PA
- i. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department, *In the Matter of Alpha Telecom, Inc., et al.*, No. 01-36-S.
- j. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283 PA.
- k. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283 PA.
- l. March 13, 2002, Final Order to Cease and Desist issued by Washington Department of Financial Institutions, *In the Matter of Alpha Telecom, Inc., et al.*, No. SDO-21-02.

The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay expenses, and that the money paid to existing investors always came from sales to new investors.

Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha

1 sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-
2 appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented
3 on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did
4 not admit the allegations of the Complaint.

5 28. On February 7, 2002, the United States District Court for the District of Oregon
6 issued its final opinion in connection with the trial of Paul Rubera. That opinion is reported at
7 *SEC v. Alpha Telcom*, 187 F. Supp. 2d 1250 (D. Or. 2002). In its opinion, the court confirmed
8 that the Alpha investment contracts are securities and thus subject to regulation as securities. The
9 court also confirmed that Alpha operated what was essentially a Ponzi scheme in connection with
10 the sale of the Alpha investment contracts.

11 29. Monthly payments to investors ceased prior to August, 2001.

12 **II.**

13 **CONCLUSIONS OF LAW**

14 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
15 Arizona Constitution and the Securities Act.

16 2. The Commission has jurisdiction to enter an order that may be collected from
17 property attributable to the marital community of RESPONDENTS, pursuant to A.R.S.
18 § 44-2031(C).

19 3. BROWN offered or sold securities within or from Arizona, within the meaning of
20 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

21 4. BROWN violated A.R.S. § 44-1841 by offering or selling securities that were
22 neither registered nor exempt from registration.

23 5. BROWN'S conduct is grounds for a cease and desist order pursuant to A.R.S.
24 § 44-2032.

25 6. BROWN'S conduct is grounds for an order of restitution pursuant to A.R.S.
26 § 44-2032.

ORDER

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that BROWN, his agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS, including the marital community of BROWN and KAREN BROWN, shall pay an administrative penalty in

1 the amount of \$7,500.00, payable to the “State of Arizona.” Payment shall be made by cashier’s
2 check or money order, with the initial payment of \$1,000.00 due and payable on the date of this
3 Order. The remaining penalty amount shall be subordinate to the restitution obligations in the
4 preceding paragraph, and shall be paid following payment in full of that restitution obligation and
5 pursuant to the payment schedule set forth in the preceding paragraph. If RESPONDENTS do not
6 comply with this order for administrative penalties, any outstanding balance shall be deemed in
7 default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that BROWN'S securities
2 salesman registration is revoked.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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6
7 /s/ Marc Spitzer William Mundell Jeffrey Hatch-Miller
8 CHAIRMAN COMMISSIONER COMMISSIONER

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11 Lowell Gleason Kristin Mayes
12 COMMISSIONER COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
14 Executive Secretary of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this 29th day of
18 June, 2004.

19 /s/ Brian C. McNeil
20 BRIAN C. McNEIL
21 Executive Secretary

22 DISSENT

23 This document is available in alternative formats by contacting Yvonne McFarlin, Executive
24 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
ymcfarlin@cc.state.az.us.

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CONSENT TO ENTRY OF ORDER

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2 1. RESPONDENTS GREGORY RUSSEL BROWN ("BROWN"), an individual, and
3 KAREN BROWN, his wife ("RESPONDENTS") admit the jurisdiction of the Commission over
4 the subject matter of this proceeding. RESPONDENTS acknowledge that they have been fully
5 advised of their right to a hearing to present evidence and call witnesses and RESPONDENTS
6 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all
7 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
8 Administrative Code. RESPONDENTS acknowledge that this Order To Cease And Desist, Order
9 of Restitution, Order for Administrative Penalties, Order of Revocation and Consent to Same by:
10 Respondents Gregory Russell Brown and Karen Brown ("Order") constitutes a valid final order of
11 the Commission.

12 2. RESPONDENTS knowingly and voluntarily waive any right they may have under
13 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
14 extraordinary relief resulting from the entry of this Order.

15 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. RESPONDENTS acknowledge that they have been represented by counsel in this
18 matter, they have reviewed this Order with their attorney and understand all terms it contains.

19 5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law
20 contained in this Order.

21 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action
22 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
23 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
24 factual basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and
25 employees, if any, understand and comply with this agreement. Nothing in this Order, however,
26 shall in any way limit RESPONDENTS' ability to defend themselves and/or take any contrary

1 position of fact or law in any subsequent litigation or other proceeding in which the Commission is
2 not a party.

3 7. While this Order settles this administrative matter between RESPONDENTS and the
4 Commission, RESPONDENTS understand that this Order does not preclude the Commission from
5 instituting other administrative proceedings based on violations that are not addressed by this
6 Order.

7 8. RESPONDENTS understand that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
9 that may be related to the matters addressed by this Order.

10 9. RESPONDENTS understand that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
12 proceedings that may be related to matters addressed by this Order.

13 10. RESPONDENTS agree that they will not exercise any control over any entity that
14 offers or sells securities or provides investment advisory services, within or from Arizona.

15 11. RESPONDENTS agree that until restitution and penalties are paid in full,
16 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change
17 in home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

18 12. RESPONDENTS understand that default shall render them liable to the Commission
19 for its costs of collection and interest at the maximum legal rate.

20 13. RESPONDENTS agree that they will continue to cooperate with the Securities
21 Division, including but not limited to providing complete and accurate testimony at any hearing in
22 this matter and cooperating with the state of Arizona in any related investigation or any other
23 matters arising from the activities described in this Order.

24 14. RESPONDENTS acknowledge that any restitution, rescission or penalties imposed by
25 this Order are obligations of BROWN as well as the marital community of RESPONDENTS.
26

/s/ Gregory Russell Brown
GREGORY RUSSELL BROWN

/s/ David A. Barden

 NOTARY PUBLIC

/s/ Karen Brown
KAREN BROWN

/s/ Robert T. Pressner

 NOTARY PUBLIC

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